

1 MR. WEBER: Since the issue is couched against Mr.
2 Breen and Westel deal with Mr. Breen's knowledge of any
3 misrepresentations that took place and actions he took
4 thereafter is, of course, based on the premise that actually
5 misrepresentations took place.

6 To that regard, are you taking it as a given that
7 misrepresentations took place, or are you wanting that to be
8 proven and then to flow from that what actions and knowledge
9 Mr. Breen had thereafter?

10 JUDGE STEINBERG: That's a real good question, and
11 I don't know the answer to that because the hearing
12 designation order seems to me to be conflicting in a certain
13 respect in that they -- all sorts of conclusions are
14 reached. This was a misrepresentation. This was
15 intentional. This was that. But yet -- and the issue is
16 phrased -- Issue 1 is phrased in terms of committed -- that
17 misrepresentations and lack of candor have occurred.

18 But yet you go to paragraph 41 where it says,
19 they're talking about credibility determinations being made
20 by a judge, what is for me to determine if the Commission
21 has already determined that there are misrepresentations?

22 So the answer to your question is I really don't
23 know. I would assume that from the way the HDO is set out,
24 and you've got a notice of apparent liability, which I
25 haven't read yet, the PCS 2000 NAL, which I should read and

1 probably will read, but I haven't read it before today, I
2 think the Commission has concluded that there were
3 misrepresentations, that there was a lack of candor, and
4 maybe that's what I have to take as a given.

5 Mr. Carroccio?

6 But I don't know.

7 MR. CARROCCIO: Your Honor, I think that this is
8 one of the classic cases of the extent to which collateral
9 estoppel does or does not apply. The Commission made some
10 rulings in that NAL. However, the individual against, and I
11 would also cite -- but I'm not talking about Mr. Breen
12 because --

13 JUDGE STEINBERG: Right.

14 MR. CARROCCIO: -- they specifically indicated
15 they were not making determinations regarding Mr. Breen in
16 that.

17 JUDGE STEINBERG: No, I know. I know. Mr. Easton
18 was not a -- he was with PCS 2000.

19 MR. CARROCCIO: He was not a party to the
20 proceeding, had no chance to answer, and I don't know what
21 Mr. Easton would put on as a defense at this time. I think
22 the one thing that maybe we could all do is indicate that at
23 some point in time there was some confusion as to what was
24 going on there, Your Honor.

25 I don't think there is anybody today who can state

1 beyond a shadow of a doubt what actually happened. We all
2 have our theories, we all have our beliefs, but there is
3 nothing that I have ever seen that concludes precisely what
4 happened. I think this would be something that we might
5 work out some stipulations on, some relatively neutral
6 stipulations. I think that it is something that there are
7 certain premises that we would be willing to stipulate to,
8 and we could go from there, and we stand ready to discuss
9 those.

10 But we can't at this point in time, Your Honor,
11 say that anybody ever concluded that there was actually a
12 hard and fast misrepresentation. We have had reported
13 certain activities that took place, but they have been
14 denied.

15 JUDGE STEINBERG: You mean there hasn't been a
16 conclusion before this memorandum and order designating the
17 case for hearing. There seems to be some pretty strong
18 language in the discussion section there that things were
19 misrepresentations and that they were intentional, et
20 cetera.

21 The question is, is this your hearing designation
22 order which in essence says these are preliminary
23 conclusions, let's go and have a hearing about them to see
24 if these will become conclusions in an initial decision, or
25 are these conclusions that you, Judge Steinberg, are bound

1 by?

2 And I don't know the answer to that because you
3 read the discussion, you read the text of Issue 1, you might
4 be led to one conclusion. Then you read, what was it,
5 paragraph 41, and you might reasonably come to another
6 conclusion.

7 Now, I, fortunately -- well, fortunately or
8 unfortunately -- inasmuch as Mr. Easton has not filed a
9 Notice of Appearance and I'm going to get rid of Issue 1, we
10 don't face that question directly, but we might face it
11 indirectly.

12 What I would say is you two see if you can work it
13 out, and if you can't and I have to rule on it, then I have
14 a 50 percent chance of being right.

15 (Laughter.)

16 MR. CARROCCIO: Your Honor, in wrestling with this
17 problem ourselves, we looked at the MO&O, and with regard to
18 Mr. Breen, in paragraph 16 of that they talked about while
19 they don't know the extent of Mr. Breen's involvement, they
20 believe the facts appear to indicate. I mean, that is --
21 that is far from being a conclusion.

22 JUDGE STEINBERG: Right.

23 MR. CARROCCIO: It is -- it is very loose and very
24 tentative at best.

25 The other thing I might suggest, Your Honor, is

1 that much of this, again, rests on the independent counsel's
2 report that I raised earlier, and that is -- the probative
3 value of that report is specious at best.

4 JUDGE STEINBERG: Well, then that's the premise
5 that you're going to have to try your case under. And if
6 Mr. Weber believes that it's not specious, then he would try
7 his case under that premise, and then I would rule at the
8 appropriate time.

9 How much time do you think you will need to
10 complete discovery? I figured about 60 days. Is that too
11 long? Well, obviously it's not too long --

12 MR. CARROCCIO: No.

13 JUDGE STEINBERG: -- given the time of year. And
14 I would suggest that discovery be completed by December
15 24th.

16 MR. CARROCCIO: Your Honor, we believe that would
17 both accommodate the travel schedule I spoke to you about
18 earlier and the need to accommodate some travel to the west
19 coast where I believe the bulk of the witnesses are located.

20 JUDGE STEINBERG: Okay.

21 MR. CARROCCIO: That appears more than fair, Your
22 Honor.

23 JUDGE STEINBERG: Okay, just for the record, the
24 travel schedule that Mr. Carroccio was referring that he and
25 I spoke about was related to the moving of the conference up

EXHIBIT F

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 97M-173
71986

In re Applications of	)	WT Docket No. 97-199
)	
WESTEL SAMOA, INC.	)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
WESTEL, L.P.	)	File Nos. 00129-CW-L-97
	)	00862-CW-L-97
For Broadband Block F Personal	)	00863-CW-L-97
Communications Systems Facilities	)	00864-CW-L-97
	)	00865-CW-L-97
	)	00866-CW-L-97

ORDER

Issued: October 15, 1997

;

Released: October 20, 1997

This will confirm certain rulings made during the course of the October 15, 1997, prehearing conference in this proceeding. The reasons for the rulings were stated on the record and are incorporated by reference.

Accordingly, IT IS ORDERED that Quentin L. Breen IS MADE A PARTY to this proceeding, and the Notice of Appearance filed on his behalf on September 26, 1997, IS ACCEPTED.

IT IS FURTHER ORDERED that the following procedural schedule IS ESTABLISHED:

December 1, 1997

On or before this date, counsel for the parties shall meet to discuss the possibility of settlement. A report on such discussion(s) shall be submitted to the Presiding Judge.

December 24, 1997

Completion of all discovery.

January 21, 1998

Exchange of exhibits. If oral testimony is to be presented, each witness shall be identified and a summary or outline of their expected testimony shall be exchanged.¹

January 28, 1998

Notification of witnesses desired for cross-examination.²

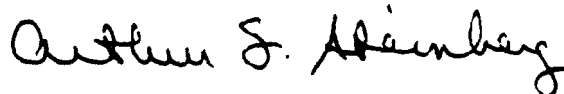
February 2, 1998

Objections to witness notification.

February 10, 1998

Commencement of the hearing at 10:00 a.m. in the Commission's Washington, D. C. offices.³

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

¹ All exhibits must be received by all parties not later than this date. The exhibits will be serially numbered, separately paginated, and assembled in a binder with a tab on each document. A prefix will be used to indicate the party sponsoring the exhibit. Each exhibit must be accompanied by the affidavit or declaration under penalty of perjury of a sponsoring witness. If official notice is requested of any materials in the Commission's files, that material should be assembled in written form, properly identified by source, given an exhibit number, and exchanged on the date set. An index containing a descriptive title of each exhibit shall be included.

The parties are strongly encouraged to submit in written form as much of their cases as is possible.

² Such notification may be made by telephone or facsimile. If oral notification is given it must be confirmed in writing.

³ Rebuttal, if any, will commence immediately after the conclusion of the direct cases.

EXHIBIT G

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 97M-189

80099

In re Applications of	)	WT Docket No. 97-199
)	
WESTEL SAMOA, INC.	)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
WESTEL, L.P.	)	File Nos. 00129-CW-L-97
	)	00862-CW-L-97
For Broadband Block F Personal	)	00863-CW-L-97
Communications Systems Facilities	)	00864-CW-L-97
	)	00865-CW-L-97
	)	00866-CW-L-97

MEMORANDUM OPINION AND ORDER

Issued: November 17, 1997

;

Released: November 19, 1997

1. Under consideration are a Notice of Deposition, filed on October 29, 1997, by the Wireless Telecommunications Bureau ("Bureau"); a Motion for Protective Order, filed on November 6, 1997, by Anthony T. Easton ("Easton");¹ and an Opposition to Motion for Protective Order, filed on November 12, 1997, by the Bureau.

2. The Bureau seeks to take Easton's deposition to inquire into the following matters:

Any knowledge possessed by [Easton] concerning the events surrounding and following the January 23, 1996, bid submission by PCS 2000 in the Commission's C Block auction[, and]

Any knowledge possessed by [Easton] concerning Quentin L. Breen's ["Breen"] awareness, complicity, and/or participation in the events surrounding and following the January 23, 1996, bid submission by PCS 2000 in the Commission's PCS C Block auction.

¹ Good cause having been shown, Easton's Contingent Motion for Acceptance of Late-Filed Pleading, filed on November 6, 1997, will be granted and his Motion for Protective Order will be accepted.

3. Easton requests the issuance of a protective order directing that his deposition not be taken. In support, Easton argues that he is not a party to this proceeding, and that the Bureau had an ample opportunity to depose him in connection with an investigation of the PCS 2000 bid. Indeed, Easton states, he offered to make himself available for deposition at that time, but the Bureau declined to depose him. Under these circumstances, Easton contends, "it would be neither appropriate nor just" to permit the Bureau to depose him now. Further, Easton maintains that the Bureau is trying to use the discovery process in this proceeding "to put together a misrepresentation/lack of candor case against him." Alternatively, should his deposition be permitted, Easton requests that the scope of his examination be "strictly limit[ed]" to matters relevant to designated Issue 2(A).² The Bureau opposes Easton's motion.

4. Easton's request to quash the Notice of Deposition will be denied. It is clear that Easton has personal knowledge of facts which are relevant to the outstanding issues in this proceeding. Given such knowledge, Easton's deposition "appears reasonably calculated to lead to the discovery of admissible evidence." See Section 1.311(b) of the Commission's Rules. Easton's status as a non-party and his argument that the Bureau could have deposed him in connection with another matter are irrelevant, and provide no basis for quashing the Notice of Deposition. Suffice it to say, the Commission's discovery rules provide for the taking of the deposition of "any person . . . for the discovery of relevant facts" (see Section 1.311 of the Rules), and "any person" would include Easton. See also Section 1.315(a) of the Rules.

5. The scope of the examination of Easton will not be limited at this juncture. However, it is noted that there is no longer any issue in this proceeding relating to Easton's activities, and there is no misrepresentation/lack of candor issue directed towards Easton.³ Therefore, the deposition of Easton should focus primarily on his relationships, communications and contacts with Breen, his cognizance of Breen's actions, inactions and conduct, his knowledge of the state of Breen's knowledge, and matters of similar import.

Accordingly, IT IS ORDERED that the Contingent Motion for Acceptance of Late-Filed Pleading, filed by Easton on November 6, 1997, IS GRANTED, and the Motion for Protective Order filed by Easton on November 6, 1997, IS ACCEPTED.

² Issue 2 reads as follows:

(A) To determine the facts and circumstances surrounding the conduct of Quentin L. Breen in connection with PCS 2000's bids placed on January 23, 1996, in the Commission's Broadband PCS C Block auction;

(B) To determine, based on the evidence adduced above, whether Quentin L. Breen engaged in misrepresentations before and/or exhibited a lack of candor towards the Commission.

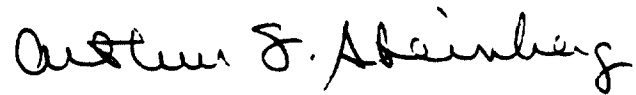
³ The hearing on Issue 1, which pertained exclusively to Easton's conduct, was terminated by Order. FCC 97M-172, released October 20, 1997.

IT IS FURTHER ORDERED that the Motion for Protective Order filed by Easton on November 6, 1997, IS DENIED.

IT IS FURTHER ORDERED that the Secretary of the Commission SHALL MAIL a copy of this Memorandum Opinion and Order to Easton's counsel at the following address:

Russell D. Lukas, Esquire
Lukas, McGowan, Nace & Gutierrez, Chartered
1111 19th Street, N.W.
Twelfth Floor
Washington, DC 20036

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge